

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,

Plaintiff,

v.

CABRERA, *et al.*,

Defendants.

Case No. 1:23-cv-01014-KES-BAM (PC)

ORDER DIRECTING DEFENDANT TO FILE
RESPONSE TO PLAINTIFF'S MOTION FOR
COURT ORDER

(ECF No. 49)

Response Due: April 28, 2025

Plaintiff Damen D. Rabb ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Plaintiff's first amended complaint against Defendant Cabrera for failure to protect in violation of the Eighth Amendment.

Pursuant to the Court's March 25, 2025 order, the deadline for completion of all discovery is June 6, 2025. (ECF No. 47.) The discovery deadline was extended in response to Plaintiff's motion requesting a thirty-day extension of time to prepare for his deposition because he had other engagements on the original deposition date of April 2, 2025, and needed additional time to gather documentation needed during the deposition itself. (ECF No. 44.) Defendant agreed to the request and made arrangements to conduct Plaintiff's deposition on May 5, 2025. (ECF No. 46.) Despite Defendant's attempts to meet and confer with Plaintiff regarding a mutually

1 agreeable date, defense counsel was unable to do so because Plaintiff refused to speak to
2 Defendant's counsel. Defense counsel was advised by the Litigation Coordinator at Plaintiff's
3 institution that it is difficult to ensure Plaintiff's attendance at appointments such as depositions
4 because he refuses to come out of his cell. Defendant noted that a previous action filed by
5 Plaintiff in this Court was terminated due to Plaintiff's refusal to attend or participate in a
6 deposition. *See Rabb v. Figueroa ("Rabb I")*, Case 1:23-cv-00843-JLT-SAB (E.D. Cal.).
7 Accordingly, the Court granted Plaintiff's motion to continue the deposition and further warned
8 Plaintiff that his failure to appear for or participate meaningfully in his deposition may subject
9 him to sanctions, up to and including terminating sanctions. (ECF No. 47, p. 3.)

10 Currently before the Court is "Plaintiff's Motion to the Court to Request that Defendant,
11 and CDCR at Kern Valley State Prison be Ordered to Provide an Escort for Plaintiff's Deposition
12 Date of May 5, 2025," filed April 21, 2025. (ECF No. 49.) Plaintiff requests that the Court take
13 notice that he is under immediate threat at Kern Valley State Prison ("KVSP"), that such a threat
14 upon his life exists currently, and that the Court order that KVSP designate a correctional
15 officer(s) escort for Plaintiff. Plaintiff alleges that KVSP lied about providing an escort in *Rabb*
16 *I*, which ultimately resulted in dismissal of that action. Plaintiff states that CDCR defendants are
17 now relying on Plaintiff to not exit his cell for scheduled deposition(s) and court proceedings, in
18 order for them to prevail, as it then appears that Plaintiff is not cooperating with his obligations in
19 this and other pending actions. Plaintiff therefore requests that an order be entered requiring
20 KVSP-CDCR to provide an escort to and from the scheduled video conference to ensure
21 Plaintiff's safety. (ECF No. 49.)

22 The Court finds it appropriate for Defendant to file a response to Plaintiff's motion.
23 Specifically, Defendant should address whether Plaintiff has previously raised with defense
24 counsel any active concerns for his safety. Defendant should also address KVSP's policy or
25 practice regarding whether inmates are escorted by correctional staff to and from scheduled video
26 appearances or whether inmates travel to and from video appearances unaccompanied by
27 correctional staff.

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Accordingly, Defendant is HEREBY ORDERED to file a response to Plaintiff's motion for a court order, (ECF No. 49), on or before **April 28, 2025**.

IT IS SO ORDERED.

Dated: April 23, 2025

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE